



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: January 3, 2007 REPORT NO. 07-007  
ATTENTION: Council President and City Council  
Council Docket of January 9, 2007  
SUBJECT: Marketing Partnership with Verizon Wireless

REQUESTED ACTIONS:

1. Authorize the Mayor to enter into a Marketing Partnership Agreement with Verizon Wireless which includes revenue to the City of \$1,250,000 for the term of the Agreement. The Agreement is based upon a two-year term with the option to renew for three additional one-year terms.
2. Authorize the expenditure of \$75,000 from Fund 100, Dept 601, Org 3305, Obj Acct 4151 for commission payment to The Pathfinder Group (Document No. C-13038).

STAFF RECOMMENDATIONS:

1. Approve the Resolution.

SUMMARY:

Background

On June 8, 1999, the City Council approved a strategic marketing plan for corporate partnerships with the City of San Diego called the Municipal Marketing Partnership Program (MMPP). On January 18, 2000, the City Council approved a Marketing Partnership Policy to provide guidelines for the Program. A copy of the policy is attached.

The MMPP, now called the Corporate Partnership Program (CPP), seeks opportunities for the City to generate cash and in-kind resources from partnerships with the corporate community in order to enhance municipal services and facilities in the City. To date, the CPP has generated over \$9,000,000 in new resources for the City through official marketing partnerships with the Pepsi Bottling Group, Verizon Wireless, General Motors, Cardiac Science, McCune Chrysler-Jeep and Sunroad Community Foundation.

On November 20, 2000, the City of San Diego and Verizon Wireless entered into a marketing partnership agreement wherein Verizon Wireless paid the City a marketing rights fee in the amount of \$200,000 annually in return for marketing opportunities available through the City. The partnership resulted in a win-win business relationship between the City and Verizon.

On March 1, 2005, the City issued a Request for Proposal and Marketing Partnership (RFP) for Wireless Communications Goods and Services. The overall objectives of the RFP for this procurement were: 1) To secure the best wireless products and services for the City at the most affordable price, and; 2) To give the wireless companies the opportunity to develop a marketing partnership wherein the City would receive cash and/or in-kind services from the vendor in return for marketing opportunities available through the City.

In response to the RFP, four companies indicated in their proposals that they were interested in participating in the CPP. These companies included Verizon Wireless, Sprint, Nextel and Cingular. The success of the first marketing partnership between the City and Verizon Wireless created a competitive environment among national wireless providers to invest substantial resources into the current marketing partnership opportunity.

#### Process

The following language about the City's CPP was included in the RFP: "This Request for Proposal is issued in conjunction with the City's Corporate Partnership Program (CPP). The CPP seeks opportunities for the City to generate revenue from partnerships with the corporate community. Respondents to this RFP are encouraged to consider furnishing goods and services based on a Marketing Partnership with the City."

The process of negotiating a marketing partnership with the interested wireless companies proceeded along parallel lines with the process of negotiating the wireless products and services contract. The City's Director of Development and The Pathfinder Group, the City's consultant to the CPP, worked on negotiating the marketing partnership. Concurrently, IT&C staff negotiated the wireless goods and services contract.

As a result of negotiations and analysis of the final pricing proposals, staff from IT&C selected Verizon as the plan that best met the needs of the City. The analysis for this selection is provided in the companion Report to the City Council. Once Verizon was selected for the wireless telephone contract, the Director of Development and the City's consultant completed negotiations for the marketing partnership and provided IT&C with the final marketing partnership proposals. Although the marketing partnership proposal was negotiated separately and is not a requirement for the goods and services contract, in this case Verizon's marketing partnership proposal proved to be the best proposal from the four participating wireless companies. The Verizon proposal was superior in that it offers the greatest economic value to the City; it requests benefits which the City is able to provide; and it is not tied to rebates, incentives and any other contingencies in the wireless telephone contract.

### Verizon Proposal

Included in Attachment B is the Marketing Partnership Agreement which has been negotiated between the City and Verizon. The Agreement is based upon a two-year term with the option to renew for three additional one-year terms. The Agreement terms are concurrent with the wireless goods and services contract.

The benefits to the City under this Agreement are as follows:

1. Verizon will pay the City a marketing rights fee in the amount of \$250,000 per year for each year that Verizon has the wireless goods and services contract. If the term of the contract for wireless goods and services is extended for the full five years, the City will receive a total of \$1,250,000 in marketing rights fees.
2. Verizon Wireless will donate 100 phones and 3,000 minutes of prepaid airtime per phone to the San Diego Family Justice Center for each year that Verizon has the wireless goods and services contract. The value of said donation for the first year, including phones and airtime is \$30,000.

Verizon's commitment to improve the quality of life in San Diego is demonstrated in their contribution to domestic violence prevention. Domestic violence prevention has been a primary area of corporate philanthropy for Verizon. Nationwide, Verizon has donated thousands of wireless phones to domestic violence shelters which are pre-programmed to dial 911 for use by victims.

Verizon has ranked highest in more third-party surveys of customer service and satisfaction than any other single U.S. wireless provider. Verizon was ranked number one in customer satisfaction in the San Diego area according to J.D. Power and Associates' 2000 Wireless Customer Satisfaction Survey.

Verizon will be the Official Wireless Partner of the City and will be afforded specific marketing benefits by the City. The Marketing Partnership Agreement ensures that the City has the right to review and approve all logos and promotional activities that represent Verizon's efforts to publicize and/or promote their rights and benefits. The marketing rights and benefits agreed to are as follows:

1. The right to be designated and referred to as the "Official Wireless Partner" of the City and the right to promote this designation
2. The right to have a logo presence on the City's website
3. The right to have a prominent presence in City produced publications.
4. The right to conduct meetings or seminars for elected officials, managers and staff to learn about wireless technologies and the Marketing Partnership with the City
5. The right to be recognized as the City's partner before a meeting of the Mayor and City Council
6. The right to offer its products and services to City employees at preferred rates and to promote these offers to City employees through newsletters, tabling opportunities or other promotional means

7. The right to establish a dedicated extranet site and phone number to facilitate communication by City employees with Verizon Wireless
8. The right to place HopeLine donation receptacles, for the purpose of collecting and recycling wireless telephones, at appropriate locations throughout the City. All collected phones will be sent to Verizon Wireless' designated vendor at no expense to the City
9. The right to develop press releases, stories, features and other publicity about the partnership for distribution to local, regional and national newspapers and wire services
10. The right to have a representative of the CPP to work with Verizon Wireless to fulfill each and every one of the rights and benefits that are listed in the Agreement

#### Conclusion

By utilizing the City's Corporate Partnership Program in conjunction with the RFP for Wireless Goods and Services, the City has forged a true partnership with the selected provider, Verizon Wireless. This negotiated procurement resulted in a partnership with the following highlights: 1) An agreement with a national company recognized for its superior customer service and leading edge technology; 2) A cost effective pricing plan for wireless telephone services and products with new wireless features, and; 3) A Marketing Partnership Agreement between the City and Verizon Wireless which will generate between \$450,000 to \$1,175,000 in new funding for the City of San Diego over the next two to five years. In addition to the annual payment of a marketing rights fee, Verizon will donate 100 phones per year to the San Diego Family Justice Center and 3,000 minutes of prepaid airtime per phone.

This partnership is an example of the continued success of the City's Corporate Partnership Program to generate much-needed revenue for the City.

The proposed partnership with Verizon is consistent with the City's Corporate Partnership Program and the City's Marketing Partnership Policy. The proposed Marketing Partnership Agreement includes benefits awarded to Verizon including the right to be designated and referred to as the "Official Wireless Partner" of the City of San Diego. The benefits do not include signage on City facilities or naming rights, and the marketing rights fee is not tied to rebates, incentives and any other contingencies in the wireless telephone contract.

#### FISCAL CONSIDERATIONS:

A \$250,000 annual marketing rights fee to be paid by Verizon Wireless to the City for each year that Verizon has the City's contract for wireless goods and services. The term of the Marketing Partnership Agreement is two years with three one year renewal options.

A transaction fee of \$25,000 will be paid to The Pathfinder Group, the City's consultant, as per the Marketing Consultant Agreement. An additional \$25,000 will be paid to The

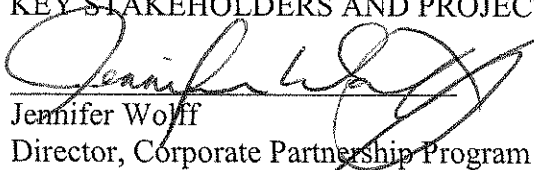
Pathfinder Group in the second year and in the third year if the marketing partnership agreement is extended. No commission fees apply to the fourth or fifth year of the marketing partnership agreement. (Document No. C-13038)

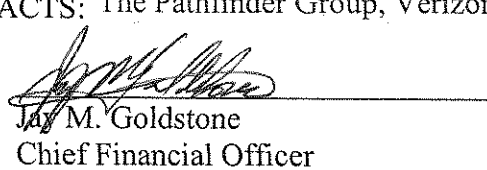
The overall fiscal impact will range from \$450,000 to \$1,175,000 depending on the length of the wireless contract. Funding to be deposited in the General Fund as part of the revenue projection for the Corporate Partnership Program.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The Pathfinder Group, Verizon Wireless

  
Jennifer Wolff  
Director, Corporate Partnership Program

  
Jay M. Goldstone  
Chief Financial Officer

Attachments:           1. Marketing Partnership Policy  
                              2. Marketing Partnership Agreement with Verizon Wireless

To locate the attachments please see the following pages:

Attachment 1 see pages 6 thru 9

Attachment 2 see pages 10 thru 20

CITY OF SAN DIEGO, CALIFORNIA  
**COUNCIL POLICY**

**CURRENT**

SUBJECT: MARKETING PARTNERSHIP POLICY  
POLICY NO.: 000-40  
EFFECTIVE DATE: February 1, 2000

BACKGROUND:

On June 8, 1999 the City Council unanimously approved a strategic marketing plan for corporate partnerships with the City of San Diego called the Municipal Marketing Partnership Program (MMPP.) The MMPP seeks opportunities for the City to generate revenue from partnerships with the corporate community in order to enhance municipal services and facilities in the City. The specific objectives of the MMPP are as follows:

1. To establish and guide relationships with existing and potential business partners who share the City's commitment to provide the highest quality civic environment through the City of San Diego.
2. To generate revenue to fund existing and additional facilities, projects, programs and activities.
3. To minimize the perception that the City has become "corporatized" by limiting the number of corporate partners while maximizing the cumulative revenue from the partners.

In conjunction with City Council's approval of the MMPP, the City Manager has developed the following Marketing Partnership Policy to provide general guidelines for the implementation of the MMPP.

PURPOSE:

To provide guidelines for developing and managing municipal marketing partnerships which ensure that all marketing partnerships support the City of San Diego's goals of service to the community and remain responsive to the public's needs and values. The following guidelines are established to maintain flexibility in developing mutually beneficial relationships with the corporate sector.

DEFINITIONS:

Marketing Partnership:

A mutually beneficial business arrangement between the City and a third person, wherein the third person provides cash and/or in-kind services to the City in return for access to the commercial marketing potential associated with the City. Marketing Partnerships may include sponsorship of one or more of the City's programs, projects, events, facilities or activities.

Request for Sponsorship

An open and competitive process whereby third persons may express their interest in participating in marketing partnership opportunities with the City of San Diego. All Request for Sponsorships (RFS) will include a summary of the partnership opportunity, benefits for participation, and a description of the open and competitive procedure for expressing interest in participating in marketing partnership opportunities.

**General Principles**

- a. The City of San Diego accepts the principle that third persons may become marketing partners with the City in the sponsorship of City-approved programs, projects, events, facilities or activities where such partnerships are mutually beneficial to both parties and in a manner consistent with all applicable policies and ordinances set by the City. Under the conditions of this policy, City staff may solicit such marketing partnerships for the City.
- b. At all times, recognition for marketing partners must be evaluated to ensure the City is not faced with undue commercialism and is consistent with the scale of each partner's contribution.
- c. Restrictions on Partnerships

In general, the following industries and products are not eligible for marketing partnerships with the City of San Diego.

1. Police-regulated Businesses
2. Companies whose business is substantially derived from the sale or manufacture of tobacco products.
3. Alcoholic beverages when the targeted beneficiaries of the marketing partnership are youth under the legal drinking age.
4. Parties involved in a law suit with the City.
5. Parties involved in any stage of negotiations for a City contract unless contract is directly linked to a marketing partnership opportunity.

The City may elect to enter into marketing partnerships with restricted partners when it is deemed appropriate and tasteful for the project.

- d. Exclusions to Marketing Partnership Policy:
  1. Gifts or unsolicited donations to a department or the City where no business relationship exists.
  2. Marketing partnership proposals forwarded to the City may not be subject to the Marketing Partnership Policy if the proposed sponsorship is determined through a good faith effort to be unique and without interested competitors.

**Marketing Partnership Process**

The general procedure for developing marketing partnerships will be as follows:

- a. Define scope of marketing partnership program or project, including a description of the community need, financial goals and general marketing strategy.

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**COUNCIL POLICY**

**CURRENT**

- b. Develop a RFS for each partnership opportunity valued at \$250,000 or greater and submit to City Council for approval. City-originated marketing partnerships valued below \$250,000 may be subject to the RFS process if participation in the partnership opportunity is deemed to be competitive and issuance of an RFS would benefit the City.
- c. Advertise RFS and implement an open and competitive bidding process for interested partners.
- d. Review and analyze all responsive proposals received through the RFS process and award partnership.
- e. Develop a Marketing Partnership Agreement with corporate sponsor which is consistent with all applicable City policies and ordinances, including Equal Employment Opportunity Outreach Program and Drug Free Workplace. Marketing partnerships with individual sponsors and marketing partnerships with an aggregate value to the City below \$250,000 may be subject to Marketing Partnership Agreement clauses to the extent legally required.
- f. Submit all Marketing Partnership Agreements with an aggregate value of \$50,000 or greater to the appropriate Council Committee for review.
- g. For the first year of the Marketing Partnership Program, submit all Marketing Partnership Agreements with an aggregate value of \$50,000 or greater to City Council for review. Thereafter, Marketing Partnership Agreements will utilize the following review and approval process:

Submit all Marketing Partnership Agreements with an aggregate value of \$250,000 or greater to the City Council for final approval. Marketing Partnership Agreements with an aggregate value to the City below \$250,000 are subject to the following levels of review and approval:

- 1. Less than \$50,000: Department Head or Director approval required.
- 2. From \$50,000 to \$250,000: City Manager approval required.

**Marketing Partnership Agreements**

All Marketing Partnership Agreements will include contractual language consistent with all applicable City policies and ordinances and good business practices. In general, Marketing Partnership Agreements should include:

- a. Contractual Relationship
- b. Term
- c. Renewal
- d. Consideration
  - Marketing Rights Fee
  - Commissions
  - In-kind Goods
  - In-kind Services
- e. Description of Programs, Projects and Activities



- f. Marketing Rights and Benefits
- g. Termination Provisions

**Responsibilities**

- a. All marketing partnership activities will be coordinated by the Development Office, or its successive office, under the Direction of the appropriate Deputy City Manager.
- b. The Development Office will be responsible for:
  - 1. implementing the City-wide Municipal Marketing Partnership Program.
  - 2. providing guidance to all City departments regarding the interpretation and application of this policy;
  - 3. providing assistance and advice to departments regarding marketing partnership activities;
  - 4. reviewing and assisting in the development of partnership arrangements as requested;
  - 5. tracking and reporting on a quarterly basis all marketing partnerships developed by City Departments.

**HISTORY:**

“Marketing Partnership Policy”

Adopted by Resolution R-292719 02/01/2000

**MARKETING PARTNERSHIP AGREEMENT  
BETWEEN THE CITY OF SAN DIEGO  
AND VERIZON WIRELESS**

This **Marketing Partnership Agreement** (the "Agreement"), effective as December 1, 2005, upon execution by authorized representatives of both parties ("Effective Date"), is made, entered into by and between the City of San Diego ("City"), with its principal place of business located at the City Administrative Building, 202 C Street, San Diego, California 92101, and Verizon Wireless (VAW) LLC d/b/a Verizon Wireless ("Verizon Wireless"), with offices located at 15505 Sand Canyon Avenue, Irvine, California 92618 (collectively "Parties").

WHEREAS, the City has developed a Corporate Partnership Program ("CPP") to generate revenue to fund existing and additional facilities, projects, programs and activities; and

WHEREAS, Verizon Wireless has demonstrated an interest in the CPP by submitting a proposal to enter into a Marketing Partnership with the City; and

WHEREAS, the City has determined that Verizon Wireless' proposal meets the objectives of the CPP and is otherwise in the best interests of the City, and

WHEREAS, the Parties desire to enter into a Marketing Partnership Agreement,

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

**Section 1.     Definitions**

The following terms shall have the following meanings whenever used in the Agreement, unless the context requires otherwise:

- 1.1 "Corporate Partnership Program" means the program approved by the City Council to seek opportunities for the City to generate revenue from partnerships with the corporate community in order to enhance municipal services and facilities in the City.
- 1.2 "Marketing Partnership" means a mutually beneficial business arrangement between the City and a corporation or other business entity ("corporation") wherein the corporation provides cash and/or in kind goods and/or services to the City in exchange for access to the commercial marketing potential associated with the City.
- 1.3 "Marketing Rights Fee" means cash and/or in-kind goods and/or services paid to the City by a corporation in exchange for entering into a Marketing Partnership with the City.
- 1.4 "Marketing Rights and Benefits" means those opportunities created by the Marketing Partnership that a corporation can utilize to promote their Marketing Partnership with the City.

- 1.5 "Wireless Telephone Service and Equipment Agreement" ("Wireless Agreement") means the written agreement with Verizon Wireless to supply the City with wireless telephone services and equipment.

**Section 2. Term**

- 2.1 The Agreement is expressly conditioned upon the prior execution of the Wireless Agreement. The term of the Agreement shall coincide with the term of the Wireless Agreement entered into by the Parties. The initial term of the Wireless Agreement is for one (1) year.
- 2.2 The City has the option to extend the Term of the Wireless Agreement for up to four (4) additional one (1) year terms, and the Agreement is subject to the renewal provisions contained within the Wireless Agreement. In no event shall the Agreement exceed five years in duration.

**Section 3. Consideration**

- 3.1 In consideration of the rights, benefits and privileges granted to Verizon Wireless under the Agreement, Verizon Wireless shall pay the City a fee of Two Hundred And Fifty Thousand Dollars (\$250,000) ("Marketing Rights Fee") per year of the term of the Agreement. If the Agreement is extended for the full five years, pursuant to Section 2 above, Verizon Wireless' Marketing Rights Fees will total One Million Two Hundred Fifty Thousand Dollars (\$1,250,000).
- 3.2 The Marketing Rights Fee for the initial term of the Agreement shall be paid within thirty (30) days of execution of the Agreement by both parties. The Marketing Rights Fee for each additional one (1) year term shall be paid within thirty (30) days of each extension of the Agreement (if applicable).
- 3.3 In furtherance of its commitment to support community projects, as part of its Hopeline program to recycle and refurbish cell phones, Verizon Wireless will donate cell phones and airtime to the City's Family Justice Center ("Justice Center") as follows:
- 3.3.1 During each year of the Agreement, Verizon Wireless will donate 100 phones per year to the Justice Center, a total of 500 phones if the Agreement is extended for five years. During the first year of the Agreement, Verizon Wireless will provide each phone with 3,000 minutes of prepaid airtime. The value of said donation for the first year, including phones and airtime is \$30,000.
- 3.3.2 Verizon Wireless will evaluate its philanthropic goals on a year to year basis and may, at its discretion, continue to provide prepaid airtime for its donated phones.

#### **Section 4.     Marketing Rights and Partnership Benefits**

In consideration of the Marketing Rights Fee paid to the City, and additional consideration, as described in Section 3 above, the City shall grant Verizon Wireless the following Marketing Rights and Benefits:

##### **4.1     Logo Designation and Usage**

- 4.1.1     The right to be designated and referred to as the "Official Wireless Partner" of the City and to use said designation in promotional and marketing efforts including press releases, stories, features and other publicity initiated by Verizon Wireless or the City.
- 4.1.2     The right to have logo presence on the City's website including visibility on the City's "Business Resources" webpage, the "Special Events" webpage that links to the "7-day Outlook" webpage and the Corporate Partnership Program webpage. Links from these web pages as well as other features of Verizon Wireless' logo presence on these web pages will be subject to current and future City policies related to City websites and the CPP.
- 4.1.3     City shall not use the Verizon Wireless name or logo on its website, or in any promotional material, without prior, written approval of Verizon Wireless.

##### **4.2     Promotional Vehicles**

- 4.2.1     The right to have a prominent presence in all City produced publications whose focus is business matters and whose target is business people in San Diego. Verizon Wireless' presence in these publications may take the form of ads, articles by Verizon Wireless regarding useful technologies for business people, articles about Verizon Wireless and its products and services or about its community service programs. The form and frequency of Verizon Wireless' presence in these publications will be determined by current and future City policies and by the policies of the individual publication. Verizon Wireless content for the Promotional Vehicles shall be created and owned by Verizon Wireless, unless otherwise agreed by the Parties. City will not alter Verizon Wireless provided content without the prior, written approval of Verizon Wireless.
- 4.2.2     The right to have the City work with Verizon Wireless to organize and promote opportunities for Verizon Wireless to conduct meetings or seminars for elected officials, managers and staff to learn about wireless technologies and its Marketing Partnership with the City.
- 4.2.3     The right to have the City arrange at least one session during each year of the Agreement for Verizon Wireless to be recognized as the City's partner before a meeting of the Mayor and City Council. The meeting will be open to the public, outside print and electronic media and recorded and replayed by the City's cable TV channel 24.
- 4.2.4     Verizon Wireless will have the right to offer its products and services to City employees at preferred rates. City to provide Verizon Wireless access to City buildings and properties for tabling opportunities to City employees a minimum of eight times per month at mutually

agreed upon dates and times. This includes the ability to promote Verizon Wireless utilizing flyers and posters. This also includes site visits to police, fire and lifeguard stations. All site visits and promotional and marketing materials are subject to approval of the CPP.

- 4.2.5 City to promote Verizon Wireless offers in City employee e-mail distribution at least two times per year; mid-November and early May are requested time periods. All e-mails and other communications with City employees will be consistent with City policies and subject to approval of the CPP and Verizon Wireless.
- 4.2.6 Verizon Wireless will have the right to market to City employees during special time periods such as Christmas, Back to School, Mother's Day and Father's Day. Method of marketing may include email distribution to City employees, tabling opportunities or other promotional means. All special promotions are subject to the approval of the CPP.
- 4.2.7 City to work with Verizon Wireless to maximize its efforts to promote its special offers to City employees including assisting Verizon Wireless to establish a dedicated extranet site and phone number to facilitate communication by City employees with Verizon Wireless. All communications via a dedicated extranet site or other communications link will be consistent with City policies and subject to the approval of the CPP.

#### 4.3 Public Relations and Corporate Philanthropy

- 4.3.1 Verizon Wireless will place Hopeline donation receptacles, for the purpose of collecting and recycling wireless telephones, at Community Service Centers, recreation centers, libraries, police and fire stations and other appropriate locations throughout the City. All collected phones will be sent to Verizon Wireless' designated vendor at no expense to the City. Relevant literature related to Verizon Wireless' Hopeline program may be displayed at receptacle sites. Locations and literature distribution will be subject to the approval of the CPP.
- 4.3.2 The City will work with Verizon Wireless to develop press releases, stories, features and other publicity about the partnership for distribution to local, regional and national newspapers and wire services.
- 4.3.3 The City will assign a representative of the CPP to work with Verizon Wireless to fulfill each and every one of the rights and benefits that are listed in the Agreement.

#### **Section 5. City's Reservation of Rights**

- 5.1 The City reserves the right to review and approve all logos, advertisements, promotional materials, promotional campaigns, product placement and appearance and any and all other materials that represent Verizon Wireless' efforts to publicize and/or promote the rights and benefits granted to it under the Agreement.

**Section 6.     Intellectual Property**

- 6.1     The City and Verizon Wireless shall each retain ownership of, and all right, title and interest in and to, their respective, intellectual property, and no license therein, whether expressed or implied, is granted by the Agreement. To the extent the parties wish to grant to the other, rights or interests in intellectual property, separate licensing agreements on mutually acceptable terms shall be executed.

**Section 7.     Confidentiality**

- 7.1     In the event either City or Verizon Wireless determines that it is necessary to provide confidential, proprietary, or trade secret information to the other party with respect to the Services performed under the Agreement, such disclosure shall only be made after advance written notice, and only under the terms of a separate "non-disclosure" agreement. Each Party's consent to enter said "non-disclosure" agreement shall not be unreasonably withheld, conditioned or delayed.

**Section 8.     Limitation on Liability**

- 8.1     Neither Party shall be liable to the other Party for any act or omission to the extent not attributable to its personnel. Notwithstanding anything in the Agreement to the contrary, in no event shall the cumulative liability for direct damages of either Party to the other Party, whether in contract or in tort, exceed the amount of two hundred and fifty thousand dollars (\$250,000.00) per each year of the Term of the Agreement. Furthermore, in no event shall either Party be liable for any indirect, special, consequential, incidental or punitive damages or lost profits, however caused, which are incurred by the other Party, its employees, subcontractors, and/or agents, or any third party, arising out of or in connection with the Agreement or the performance or breach thereof, even if such Party has been advised of the claim or potential claim or of the possibility of such damages. City shall have no liability whatsoever for interruptions or defects in website links from City Websites to the Verizon Wireless Website, except if caused by City's willful misconduct and resulting in injury to the Verizon Wireless website.

**Section 9.     Equal Opportunity Contracting Program**

- 9.1     Verizon Wireless acknowledges and agrees that it is aware of, and shall comply with, the City's Council Ordinance No. 18173, Section 22.2701, EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM.
- 9.2     Verizon Wireless shall comply with Title VII of the Civil Rights Acts of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations herein enacted. Verizon Wireless shall not discriminate against any employee or applicant for employment on any basis prohibited by law.
- 9.3     Verizon Wireless submitted, and the City acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Verizon Wireless shall take to achieve the City's commitment to equal employment opportunities.

**Section 10.     Nondiscrimination in Contracting Ordinance**

- 10.1     Verizon Wireless shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age or disability in the solicitation, selection, hiring or treatment of subcontractors to participate in subcontracting opportunities. Verizon Wireless understands and agrees that violation of this clause shall be considered a material breach of the Agreement and may result in termination, debarment or other sanctions.

**Section 11.     Drug Free Workplace**

- 11.1     All City projects and services are now subject to City Resolution No. R-277952 adopted on May 20, 1991. All responders and providers should be aware of the provisions of Council Policy 100-17 which was established by the above numbered resolution. The policy applies equally to the contractor and all subcontractors.

**Section 12.     Insurance**

- 12.1     Each Party shall maintain, at its own expense, the following types of insurance coverage during the Term, including any renewal or extension, of the Agreement:
- 12.1.1     Commercial General Liability Insurance ("CGL") written on an occurrence basis which shall cover liability arising from any and all personal injury or property damage in the amount of at least one million dollars (\$1,000,000) per occurrence and subject to an annual aggregate of two million dollars (\$2,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy, where commercially reasonable.
- 12.1.2     Commercial Automobile Liability Insurance for all of the Party's automobiles, including owned, hired or non-owned automobiles ["any auto"]. Each Party shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, for bodily injury and property damage for a combined single limit of one million dollars (\$1,000,000) per occurrence.
- 12.1.3     Worker's Compensation Coverage for all of the Party's employees who are subject to the Agreement and to the extent required by applicable state or federal law, such Party shall keep in full force and effect, a Worker's Compensation policy. That policy shall provide a minimum of one million dollars (\$1,000,000) of employer's liability coverage, and such Party shall provide an endorsement or provision that the insurer waives the right of subrogation against the other Party and its respective elected officials (if applicable), officers, employees, agents or representatives.
- 12.2     Insurer Requirements. All insurance required by the express provision of the Agreement shall be carried only by insurers rated at least "A-" or "V" or better by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been reasonably approved by the other Party. The Parties may accept insurance provided by non-admitted,

"surplus lines" carriers only if the carrier is authorized to do business in the State of California, is shown on the current List of Eligible Surplus Lines Insurers (LESLI list) and otherwise meets the rating requirements.

- 12.3 This insurance shall cover all of each Party's employees engaged in the performance of the Agreement. Each Party shall require that all subcontractors of such Party engaged in the performance of the Agreement maintain similar levels and limits of insurance coverage.
- 12.4 Each Party shall name the other Party as an additional insured on all general and automobile liability policies required herein. The policies shall be primary and non-contributory to any insurance, as it relates to the other Party's operations, that may be carried by the other Party, as reflected in a certificate, which shall be submitted to the other Party.
- 12.5 Each Party shall, within ten (10) days of execution of the Agreement, furnish the other Party with certificates of insurance for coverage as required herein. Companies writing the insurance under this article shall be licensed to do business by the State of California. All certificates for each insurance policy required by this Article shall be signed by a person authorized by that insurer.
- 12.6 The certificates shall provide that thirty (30) days prior written notice of cancellation of the insurance to which the certificates relate shall be given to the other Party.
- 12.7 In the event either Party is self-insured, in lieu of Certificates of Insurance, such Party shall provide to the other Party a letter of self-insurance or such other information as may be reasonably required by the other Party to ensure adequate levels of coverage.

### **Section 13     Indemnification**

- 13.1 To the extent allowable by law, City agrees to indemnify and hold harmless Verizon Wireless, its officers, directors, agents, and employees, from and against any and all claims, demands, obligations, causes of action and lawsuits and all damages, liabilities, fines, judgments, costs (including settlement costs), and expenses associated therewith (including the payment of reasonable attorney fees and disbursements), arising out of: (1) the failure of City, its employees or agents, to comply with the terms and conditions of the Agreement; (2) the negligent acts or omissions of City, its employees, agents, or subcontractors; (3) Verizon Wireless' use of City's Marks as authorized by the Agreement; or (4) the services performed or actions taken by City, its employees or agents, in connection with the Agreement.
- 13.2 To the extent allowable by law, Verizon Wireless agrees to indemnify, defend, and hold harmless City, its officers, directors, agents and employees from and against any and all claims, demands, obligations, causes of action and lawsuits and all damages, liabilities, fines, judgments, costs (including settlement costs), and expenses associated therewith (including the payment of reasonable attorney fees and disbursements), arising out of: (1) the failure of Verizon Wireless, its employees or agents, to comply with the terms and conditions of the Agreement; (2) the negligent acts or omissions of Verizon Wireless, its employees, agents, or subcontractors, (3) City's use of Verizon Wireless' Marks as authorized by the Agreement; or (4) the services performed or actions taken by Verizon Wireless, its employees or agents, in connection with the Agreement.



**Section 14. DISPUTE RESOLUTION**

- 14.1 If a dispute arises out of, or relates to the Agreement, or the breach thereof, and if said dispute cannot be settled through negotiations, the Parties agree to first endeavor to settle the dispute in good faith, using mandatory non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures, before having recourse in a court of law.
- 14.2 Any such mediation shall be held in San Diego, California, unless the Parties otherwise agree to another location. The Parties agree to select a mediator from the AAA's panel of approved neutrals.
- 14.3 The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 14.4 Any agreements resulting from mediation shall be documented, in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.
- 14.5 In the event that a dispute cannot be resolved in the manner described above, the Parties agree to waive any and all rights to jury trial.

**Section 15. Miscellaneous**

**15.1 Termination**

- 15.1.1 Either Party shall have the right to terminate the Agreement, if the other Party fails to comply with any material term, condition, or obligation of this Agreement and fails to cure such failure within thirty (30) days of receipt of written notice specifying the failure.
- 15.1.2 Either Party may terminate the Agreement immediately upon written notice to the other Party in the event that: (a) either Party makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature, (b) a trustee or receiver of any substantial part of either Party's assets is appointed by any court, or (c) a proceeding is instituted under any provision of the Federal Bankruptcy Laws by or against either Party, and such proceeding is acquiesced in or is not dismissed within 60 days or results in an adjudication in bankruptcy.

**15.2 Notices**

In all cases where written notice is required under the Agreement, service shall be deemed sufficient if the notice is deposited in the United States first-class mail, postage paid. Proper notice shall be effective on the date it is mailed, unless provided otherwise in the Agreement. For the

purpose of the Agreement, unless otherwise agreed in writing, notice to the City shall be addressed to: Office of the Mayor, 202 C Street, 10th Floor, San Diego, CA 92101 and notice to Verizon Wireless shall be addressed to: President, Southern California Region, 15505 Sand Canyon Avenue, Irvine, California 92618, with a copy to West Area General Counsel, 15505 Sand Canyon Avenue, Irvine, California 92618.

### 15.3 Headings

All article headings are for convenience only and shall not affect the interpretation of the Agreement.

### 15.4 Non-Assignment

Neither Party may assign its rights or delegate its duties under the Agreement to any other party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned, except that Verizon Wireless may assign the Agreement to: (a) any parent, subsidiary or Affiliate entity; or (b) a successor in interest of all or substantially all of the assets, stocks or business of a Party to which the Agreement pertains, so long as such assignee possesses the financial and operational capabilities to perform the Agreement and agrees to assume and fully discharge all of the duties and further obligations of the assignor arising under the Agreement. Subject to the provisions of this section, the Agreement shall inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties hereto. However, any assignment in violation of this paragraph shall constitute a default and is grounds for immediate termination of the Agreement. In no event shall any putative assignment create a contractual relationship with the putative assignee.

### 15.5 Independent Contractors

Verizon Wireless and any subcontractors employed by Verizon Wireless shall be deemed to be independent contractors and not agents of the City. Any provisions of the Agreement that may appear to give the City any right to direct Verizon Wireless concerning the details of operating the Marketing Partnership, or to exercise any control over such performance, shall mean only that Verizon Wireless shall follow the direction of the City concerning the end results of the performance.

### 15.6 Covenants and Conditions

All provisions of the Agreement expressed as either covenants or conditions on the part of the City or Verizon Wireless shall be deemed to be both covenants and conditions.

### 15.7 Compliance with Controlling Law

Both parties shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to the Agreement. In addition, Verizon Wireless shall comply immediately with all directives issued by the City or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations. The laws of the State of California shall govern and control the terms and conditions of the Agreement.

15.8 Jurisdiction, Venue, and Attorney's Fees

The venue for any suit or proceeding concerning the Agreement, the interpretation or application of any of its terms, or any related disputes shall be in the County of San Diego, State of California. The prevailing Party in any such suit or proceeding shall be entitled to recover its reasonable attorneys' fees in addition to any other award made in such suit or proceeding.

15.9 Successors in Interest

The Agreement and all rights and obligations created by the Agreement shall be in force and effect whether or not any Parties to the Agreement have been succeeded by another entity, and all rights and obligations created by the Agreement shall be vested and binding on any Party's successor in interest.

15.10 Integration

The Agreement and the exhibits and references incorporated into the Agreement fully express all understandings of the Parties concerning the matters covered in the Agreement. No change, alteration, or modification of the terms or conditions of the Agreement, and no verbal understanding of the Parties, their officers, agents, or employees shall be valid unless made in the form of a written change agreed to in writing by both Parties and an amendment to the Agreement agreed to by both Parties. All prior negotiations and agreements concerning the subject matter hereof are merged into the Agreement.

15.11 Counterparts

The Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

15.12 No Waiver

No failure of either the City or Verizon Wireless to insist upon the strict performance by the other of any covenant, term or condition of the Agreement, nor any failure to exercise any right or remedy upon a breach of any covenant, term, or condition of the Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter the Agreement, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach.

15.13 Severability

The unenforceability, invalidity, or illegality of any provision of the Agreement shall not render any other provision of the Agreement unenforceable, invalid, or illegal.

15.14 Municipal Powers

Nothing contained in the Agreement shall be construed as a limitation upon the powers of the City as a chartered City of the State of California.

15.15 Drafting Ambiguities

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of the Agreement, and the decision of whether or not to seek advice of counsel with respect to the Agreement is a decision which is the sole responsibility of each Party. The Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

15.16 Signing Authority

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or Parties hereto harmless if it is later determined that such authority does not exist.

IN WITNESS WHEREOF, the Agreement is executed by the City of San Diego, acting by and through its Corporate Partnership Program's Acting Director, pursuant to City Council Resolution \_\_\_\_\_, and by Verizon Wireless.

**THE CITY OF SAN DIEGO**

By: \_\_\_\_\_  
Jay M. Goldstone  
Chief Financial Officer

Date: \_\_\_\_\_

**VERIZON WIRELESS (VAW) LLC D/B/A VERIZON WIRELESS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_